

IN THE MATTER OF:

WORCESTER ENERGY PARTNERS, INC.'S)	LICENSE
acquisition of Worcester Energy Co., Inc.'s)	TRANSFER
Biomass Boiler Facility in Deblois, Maine.)	(Air Emissions; Solid Waste;
)	Site Location of Development)

Pursuant to Maine's *Protection and Improvement of Air* laws, 38 M.R.S.A. §§ 581–610-A, *Site Location of Development* law, 38 M.R.S.A. §§ 481–490, *Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S.A. §§ 1301–1319-Y, the Maine Department of Environmental Protection ("Maine DEP") rules promulgated pursuant to these laws; and the Department's *Rules Concerning the Processing of Applications and Other Administrative Matters* (April 1, 2003), 06-096 CMR 2, the Maine DEP has considered the application of Worcester Energy Partners, Inc. ("WEPI") and Worcester Energy Co., Inc. ("WECO"), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

A. Application. WEPI submitted an application to Maine DEP for the transfer of licenses on October 12, 2005. The application sought to transfer to WEPI all active Maine DEP licenses, as defined in 06-096 CMR 2.1(J), any modifications, conditional compliance orders, all other approvals, and all applications pending in the name of Worcester Energy Co., Inc. relating to Worcester Energy Co., Inc.'s biomass boiler in Deblois, Maine (hereinafter referred to as the "Facility"). A schedule of permits and applications the subject of the application, and this Department Order, is set forth in Appendix A. Maine DEP accepted WEPI's license transfer application as complete for processing on November 29, 2005. Pursuant to 06-096 CMR 2.21(C)(1), while an application for the transfer of licenses is pending, the original licensee and the transferee are jointly and severally liable for any violations of the terms and conditions of the original license. Under 06-096 CMR 2.21(C)(1), before the Department may transfer a license a transferee is required to demonstrate to the Department's satisfaction the financial and technical capacity and intent to: (a) comply with all terms and conditions of the applicable license, and (b) satisfy all applicable statutory or regulatory criteria.

B. History

- (1) The Transaction.** Immediately prior to WEPI's transfer request, WECO was the owner of the Facility and WECO presently is the holder of the licenses set forth in Attachment A. On October 11, 2005, ownership of the Facility's assets was transferred to WEPI.
- (2) Operations.** WECO operates a 25.85 megawatt wood-fired power plant in Deblois, Maine.

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2. TRANSFER REQUIREMENTS

The following information regarding WEPI and WECO was submitted in support of the transfer application:

- A. Title, Right, or Interest.** WEPI submitted an executed copy of a Quit Claim Deed with Covenant, and associated attachments, dated October 11, 2005, transferring the Facility's assets from WECO to WEPI. Based on the information submitted, WEPI has provided sufficient evidence of title, right, or interest in the Facility to allow the transfer, from WECO to WEPI, of the Facility's licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, condition compliance orders, and pending applications.
- B. Financial Capacity and Intent.** In its original application materials, WEPI submitted a letter dated October 12, 2005 from its attorney outlining the company's overall financial condition. The letter described the circumstances pursuant to which WECO and WEPI gave a mortgage to Prospect Energy Corporation ("Prospect"), a publicly traded company in the energy field, in return for a loan in the amount of \$10.7 million to retire debt previously incurred by WECO, and to provide working capital for the upgrade and operation of the Facility. A copy of the mortgage was provided. The letter indicates that Prospect made the loan based on the value of the Facility as an asset, and based upon the Facility's future ability to generate biomass power.

On November 17, 2005, WEPI submitted a balance sheet for the company, and on January 10, 2006, WEPI submitted an income statement for the company, both compiled by its accountants. While the balance sheet and income statement indicated that the company's short-term health was sound, the Department was concerned with WEPI's ability to maintain long-term debt. The balance sheet and income statement indicated that the company had long-term debt in excess of \$11 million, negative net income, and negative total equity. Based upon a review of the income statements, the Department was unable to make a determination that WEPI had the financial ability to maintain its long-term debt obligations.

In deference to WEPI, because WEPI was a new company at the time the transfer application was submitted, the Department allowed WEPI a period of time in which to attempt to build a record of financial ability during which time WECO and WEPI were jointly and severally liable for any noncompliance with the terms and conditions of the facility's licenses as provided for under the provisions of 06-096 CMR 2.21(C)(1).

On July 27, 2006, the Department requested updated financial statements from WEPI and requested an explanation of the financial relationship between WEPI and Prospect with respect to day-to-day operating expenses for the Facility.

On November 9, 2006, the Department received a letter submitted by WEPI indicating that while Prospect continued making financial contributions to WEPI there was, in fact, no formal agreement concerning operating and maintenance costs existing between WEPI and Prospect. The Department was still unable to make a finding of financial ability with respect to WEPI because Prospect's financial capacity was being relied upon and there was no formal financing arrangement between Prospect and WEPI.

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On August 28, 2007, WEPI submitted an additional financial summary. WEPI recounted capital improvements to the facility of \$1.48 million in 2006, \$1.44 million through the date in the letter in 2007, and anticipated an additional \$600,000 in capital improvements during the remainder of 2007. The summary provided that after an operating deficit in 2006, WEPI has operated without a deficit in 2007, and anticipates gross profits of \$1.2 million in 2008 and \$2.1 million in 2009. In addition, WEPI submitted a power purchase agreement for the period between 2006 and 2009. Pursuant to the contract, WEPI is to provide a minimum of 15 MW per hour based on a rolling sixty day average. Because WEPI has described its independent improving financial condition, and based upon the representations made by WEPI concerning future revenues, the Department believes that WEPI has made a showing of financial ability adequate to satisfy the requirements of 06-096 CMR 2.21(C)(1).

Based on the information submitted, WEPI has demonstrated sufficient financial capacity and intent to assure compliance with all Maine DEP licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, condition compliance orders, pending applications, as well as any statutory and regulatory criteria applicable to the facility, subject to the conditions set forth below.

C. Technical Capacity and Intent.

In its October 2005 transfer application, WEPI provided resumes of the employees and consultants responsible for environmental compliance to show that WEPI has the technical capacity to operate the facility in accordance with applicable laws, regulations, and license and permit conditions. Because WEPI had no established track record of operating the Facility and due to the Facility's compliance history under its prior owner WECO, which included air emissions, continuous emissions monitoring, continuous opacity monitoring, and ash handling and storage that were resolved by means of a September 2005 judicial consent order, the Department could not make a determination that WEPI had the technical capacity and intent to comply with all terms and conditions of the applicable license and satisfy all applicable statutory or regulatory criteria. In deference to WEPI, because WEPI was a new company at the time the transfer application was submitted, the Department allowed WEPI a period of time in which to attempt to build a record of technical ability. During this time WECO and WEPI remained jointly and severally liable for any noncompliance with the terms and conditions of the facility's licenses as provided for under the provisions of 06-096 CMR 2.21(C)(1).

WEPI started operation of three 135.5 MMBTU wood fired boilers used for electrical generation for the purpose of producing power in the fourth quarter of 2005. During WEPI's first quarter of operation, the Department documented opacity excess emissions, Continuous Opacity Monitor downtime, and CO Continuous Emission Monitor downtime.

During the time between 4th quarter 2005 and 2nd quarter 2007, Worcester gradually improved its operations by improving the quality of its fuel supply, making improvements to its emissions monitoring systems and the general maintenance of the boilers, including closing any air leaks on the air pollution control equipment, more frequent cleaning of sand beds and a more stable operation of the power generation facility.

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Despite the improvements, the Department's Bureau of Air Quality initiated an enforcement action against Worcester Energy Partners, Inc. by a Notice of Violation ("NOV") dated July 13, 2006. Additional violations were documented by the Department after July 13, 2006. Violations cited include exceeding license limits for opacity, failure to adequately operate the facility's continuous opacity monitoring system, and failure to adequately operate the facility's continuous emission monitoring system. Most recently, during the second quarter of 2007, WEPI's compliance results reflected continued improvement.

Due to WEPI's recent history of non-compliance with relevant license conditions and applicable Department rules, the Department finds that, in addition to its salaried compliance staff, WEPI shall, for a period of 5 years from the date of this order: (A) retain qualified outside consultants approved by the Department to manage its ash management, ash utilization, and air emissions compliance programs; (B) in the event that a replacement program manager is required for whatever reason, WEPI must retain a suitable replacement manager who has been approved by the Department; and (C) in the event that it becomes necessary for WEPI to retain a replacement program manager for its ash utilization program, WEPI may not deliver any ash for agricultural or silvicultural use, unless and until a replacement program manager has been retained by WEPI and approved by the Department. Based on the information submitted and the conditions set forth herein, WEPI has demonstrated sufficient technical capacity and the intent to comply with all Maine DEP licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, conditional compliance orders, pending applications, and any statutory and regulatory criteria applicable to the facility, subject to the conditions set forth below.

D. Solid Waste Facility Disclosure. The disclosure statement provided by WEPI in accordance with the *General Provisions*, 06-096 CMR 400.12, of Maine's solid waste management rules reveals that the corporation, and its directors and operator have no record of any criminal, civil violations or consent decrees in the last five years, with the exception of a Consent Order entered into between Maine DEP and Worcester Energy Co, Inc. in the State of Maine, District Court at Machias and entered by the court on September 26, 2005. Based on the information submitted, the Maine DEP finds that WEPI's civil and criminal record shows satisfactory ability and intent to comply with the licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, condition compliance orders, pending applications, and any statutory and regulatory criteria applicable to the Facility operations.

BASED ON THE ABOVE FINDINGS OF FACT, the Maine DEP CONCLUDES that WEPI has demonstrated the technical and financial capacity and intent to comply with the conditions of all Maine DEP licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, conditional compliance orders and pending applications associated with the facilities described in this Order's findings, including specifically those licenses and applications listed in Appendix A, and to satisfy all applicable statutory and regulatory criteria, subject to the conditions set forth below.

THEREFORE the Maine DEP APPROVES the application of WEPI SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

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Due to WEPI's history of non-compliance with relevant license conditions and applicable Department rules, WEPI shall, for a period of 5 years from the date of this order: (A) retain qualified outside consultants approved by the Department to manage its ash management, ash utilization, and air emissions compliance programs; (B) in the event that a replacement program manager is required for whatever reason, WEPI must retain a suitable replacement manager who has been approved by the Department; and (C) in the event that it becomes necessary for WEPI to retain a replacement program manager for its ash utilization program, WEPI may not deliver any ash for agricultural or silvicultural use, unless and until a replacement program manager has been retained by WEPI and approved by the Department.

DONE AND DATED AT AUGUSTA, MAINE THIS _____ DAY OF OCTOBER, 2007.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
David P. Littell, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application 10/12/2005

Date application accepted for processing 11/29/2005

Date filed with the Board of Environmental Protection _____

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AIR QUALITY ORDERS		
NUMBER	DESCRIPTION	APPROVED
AIR EMISSIONS LICENSES:		
A-000216-70-C-A	AIR EMISSIONS LICENSE: AMENDMENT	Pending
A-000216-70-B-A	AIR EMISSIONS LICENSE: AMENDMENT	04/20/2005
A-000216-70-A-I	INITIAL PART 70 AIR EMISSION LICENSE	06/26/2002

SOLID WASTE ORDERS		
NUMBER	DESCRIPTION	APPROVED
SOLID WASTE AND RESIDUALS ORDERS:		
S-020025-SE-E-A	SLUDGE AND RESIDUALS, WOOD ASH UTILIZATION: AMENDMENT	Pending
S-021732-CG-B-N	COMPOSTING AND RESIDUAL PROCESSING, COMPOST RESIDUALS	12/17/1997
S-020025-SE-D-N	SLUDGE AND RESIDUALS, WOOD ASH UTILIZATION	12/11/1995
S-021196-SK-A-P	ASH UTILIZATION SITE PERMIT	10/25/1993
S-020793-SK-A-P	ASH UTILIZATION SITE PERMIT	05/06/1992
S-020789-SK-A-P	ASH UTILIZATION SITE PERMIT	02/28/1992
S-020767-SK-A-P	ASH UTILIZATION SITE PERMIT	01/08/1992
S-020698-SK-A-P	ASH UTILIZATION SITE PERMIT	09/10/1991
S-020706-SK-A-P	ASH UTILIZATION SITE PERMIT	09/10/1991
S-020611-SK-A-P	ASH UTILIZATION SITE PERMIT	03/26/1991
S-020451-SK-A-P	ASH UTILIZATION SITE PERMIT	09/06/1990
S-020278-SK-A-P	ASH UTILIZATION SITE PERMIT	11/03/1989
S-020282-SK-A-P	ASH UTILIZATION SITE PERMIT	11/03/1989
S-020178-SK-A-P	ASH UTILIZATION SITE PERMIT	10/02/1989
S-020195-SK-A-P	ASH UTILIZATION SITE PERMIT	10/02/1989
S-020209-SK-A-P	ASH UTILIZATION SITE PERMIT	10/02/1989

LAND USE ORDERS		
NUMBER	DESCRIPTION	APPROVED
SITE LOCATION OF DEVELOPMENT ORDERS:		
L-003489-24-M-A	SITE LOCATION OF DEVELOPMENT ORDER: AMENDMENT	07/07/1993
L-003489-24-N-A	SITE LOCATION OF DEVELOPMENT ORDER: TRANSFER	05/04/1993
L-003489-24-K-A	SITE LOCATION OF DEVELOPMENT ORDER: MODIFICATION	05/17/1991
L-003489-24-L-A	SITE LOCATION OF DEVELOPMENT ORDER: MODIFICATION	05/01/1990
L-003489-24-I-A	SITE LOCATION OF DEVELOPMENT ORDER: C	07/25/1989
L-003489-24-J-A	SITE LOCATION OF DEVELOPMENT ORDER: C	07/25/1989
L-003489-24-H-A	SITE LOCATION OF DEVELOPMENT ORDER: AMENDMENT	02/13/1989
L-003489-24-F-A	SITE LOCATION OF DEVELOPMENT ORDER: MODIFICATION	04/06/1987

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LAND USE ORDERS		
NUMBER	DESCRIPTION	APPROVED
L-003489-24-E-A	SITE LOCATION OF DEVELOPMENT ORDER: MODIFICATION	12/03/1986
L-003489-24-D-A	SITE LOCATION OF DEVELOPMENT ORDER: MODIFICATION	12/18/1985
L-003489-24-C-A	SITE LOCATION OF DEVELOPMENT ORDER: MODIFICATION	08/27/1985
L-003489-24-B-A	SITE LOCATION OF DEVELOPMENT ORDER: MODIFICATION	08/22/1985
L-003489-24-A-A	SITE LOCATION OF DEVELOPMENT ORDER: AMENDMENT	06/26/1985